

October __, 2016

MEMORANDUM TO: Board of Directors

FROM:

Doreen Eberley
Director, Division of Risk Management Supervision

SUBJECT:

Federal Register Statement and Order to Issue Temporary Exceptions to FIRREA Appraisal Requirements in Areas Affected by Severe Storms and Flooding in Louisiana

Summary of Recommendation

Staff recommends that the FDIC's Board of Directors (Board) approve the issuance of the attached *Federal Register* Statement and Order (FR Statement and Order), entitled *Temporary Exceptions to FIRREA Appraisal Requirements in Areas Affected by Severe Storms and Flooding in Louisiana*, for publication in the *Federal Register*. The FR Statement and Order would grant relief from the appraisal requirements set forth in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and its implementing regulations contained in Part 323 of Title 12 of the Code of Federal Regulations (Part 323). If approved, the FR Statement and Order would be issued jointly by the FDIC, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the National Credit Union Administration (collectively, the Agencies).

Background

Beginning on August 11, 2016, areas in Louisiana were adversely impacted by severe storms lasting for 72 hours that resulted in significant flooding along the Amite River. Estimates reported that as many as 60,000 homes were damaged.

On August 14, 2016, President Obama declared that a major disaster area existed in Louisiana. Of Louisiana's 64 parishes, 22 parishes were declared to be within the designated disaster area (hereinafter, Major Disaster Area). There are 56 insured depository institutions headquartered within the Major Disaster Area, of which the FDIC is the primary federal regulator for 46. Furthermore, another 29 insured institutions have branches located within the Major Disaster Area, of which the FDIC is the primary federal regulator for 20. When all facilities are included, there are over 700 individual headquarters or branch locations of depository institutions within the 22-parish Major Disaster Area. Bank facilities have been damaged as well.

On August 15, 2016, the FDIC published FIL-54-2016, *Guidance to Help Financial Institutions and to Facilitate Recovery in Areas of Louisiana Affected by Severe Storms and Flooding*, to provide guidance to financial institutions and to facilitate recovery in areas of Louisiana affected by the severe storms and flooding. In that FIL, the FDIC encouraged institutions to work constructively with borrowers experiencing difficulties because of damage caused by the severe weather and stated that the FDIC would provide regulatory assistance to institutions subject to its supervision. On September 2, 2016, the FDIC also published FIL-59-2016, *Meeting the*

Financial Needs of Customers Affected by Storms and Flooding in Louisiana, and further encouraged depository institutions to consider all reasonable and prudent steps to assist customers in communities affected by recent storms and flooding in Louisiana.

Under the Depository Institution Disaster Relief Act of 1992 (DIDRA),¹ which added section 1123 to Title XI of FIRREA, the Board has statutory authority to waive appraisal requirements to assist institutions operating within the affected area in the recovery effort. The Board exercised this authority in 2005 to facilitate relief efforts after Hurricanes Katrina and Rita.

Summary of the Depository Institution Disaster Relief Act and Statutory Requirements

Section 1123 of FIRREA, as added by section 2 of DIDRA, provides the FDIC, OCC, FRB, and NCUA with the authority to waive certain appraisal rules if specific statutory requirements are met.² Under section 1123, each Federal financial institution regulatory agency may, by regulation or order, make exceptions to appraisal requirements set forth in FIRREA for transactions involving institutions for which the agency is the primary Federal regulator with respect to real property located within a designated disaster area, if the agency: (1) makes the exception not later than 30 months after the date on which the President determines, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act,³ that a major disaster exists in the area; and (2) determines that the exception (a) would facilitate recovery from the major disaster and (b) is consistent with safety and soundness.

The Agencies have determined that the disruption of real estate markets in the Major Disaster Area interferes with the ability of insured depository institutions to obtain appraisals that comply with FIRREA and the implementing regulations. Further, the Agencies have concluded that providing institutions with exceptions from compliance with these statutory and regulatory requirements would facilitate recovery in the Major Disaster Area.⁴ Issuance of the FR Statement and Order would exempt real estate transactions in the Major Disaster Area from all requirements of Title XI of FIRREA and Part 323 from the date of the August 14, 2016 declaration until December 31, 2017.

However, the FDIC (and the OCC, FRB, and NCUA) would continue to require that lenders make loans that are consistent with safe and sound banking principles. Specifically, financial institutions relying on the appraisal exemption would be required to determine and maintain documentation that: (1) the transaction involves real property located in one of the 22 parishes declared a major disaster area as a result of severe storms and flooding in Louisiana by the President on August 14, 2016 (identified in the Appendix); (2) there is a binding commitment to fund a transaction that was entered into on or after August 14, 2016 (the date the President made the major disaster declaration), but no later than December 31, 2017; and (3) the value of the real property supports the institution's decision to enter into the transaction.

¹ Pub. L. No. 102-485 (Oct. 23, 1992).

² 12 U.S.C. § 3352.

³ 42 U.S.C. § 5170.

⁴ In addition, 12 C.F.R. § 303.12 provides that the Board may waive the applicability of any FDIC regulatory provision for good cause and to the extent permitted by statute.

Recommendation

Given the nature and extent of the devastation from the flooding in Louisiana, the determination that relief from the appraisal requirements would facilitate recovery in the affected area, and the provisions to ensure loans are made on a safe and sound basis, staff recommends the Board approve the attached Resolution to adopt and authorize the publication in the *Federal Register* of the attached FR Statement and Order. If approved by the Board, and subject to the other Agencies' approval processes, the FR Statement and Order would be published jointly by the Agencies in the Federal Register.

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CONCUR:



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Attachments